

**Matter of:** Orbas & Associates

**File:** B-255279

**Date:** January 10, 1994

---

William L. Bruckner, Esq., Corona & Balistreri, for the protester.

Jose Aguirre, Esq., Diane D. Hayden, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency. Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

**DIGEST**

Agency's decision to reject bid due to suspected mistake was reasonable where the bid price is significantly lower than both the other bid prices submitted and the government estimate, and where the bidder failed to submit sufficient documentation or explanation to support its bid calculations, creating a reasonable doubt that the bid price included all costs associated with the work required by the solicitation.

---

**DECISION**

Orbas & Associates protests the rejection of its bid and the award of a contract to Tomblason, Inc. under invitation for bids (IFB) No. N62474-92-B-3565, issued by the Department of the Navy for structural repairs to townhouse units at the Naval Postgraduate School in Monterey, California. The Navy rejected Orbas's bid because the bid price was so low that it appeared a mistake had been made, and the firm failed to provide sufficient documentation or explanation to support its bid price.

We deny the protest.

The solicitation, issued on August 13, 1993, asked prospective bidders to submit a lump-sum price for the furnishing of all labor, materials, and equipment required to complete the structural repairs specified in the statement of work. The project was divided into numerous sections, including demolition and removal, asbestos and lead paint removal, storm drainage system, concrete casting and repair, metal fabrication, rough carpentry, doors and windows, and mechanical work. The estimated cost for the

repair work was listed on the IFB as between \$1 million and \$5 million.

The agency received nine bids by the September 14 bid opening. Orbas submitted the apparent low bid of \$888,888. Tombleson's next low bid was \$1,199,020, and the government estimate was \$1,330,000. The Navy suspected a mistake in Orbas's bid because it was approximately 26 percent below the second-low bid, and 33 percent below the government estimate. On September 15, the contracting officer telephoned the firm and asked for a bid review and confirmation, if appropriate. An Orbas employee stated that the firm was diligently reviewing its numbers and, once the review was completed, the bid would be either confirmed or withdrawn. On September 16, the contracting officer again telephoned the firm regarding the status of its bid review and was told that the firm was still reviewing its bid. On that same day, the Navy repeated its request for bid confirmation in a telefacsimile. This letter indicated that the request was made because Orbas's bid was substantially lower than the government estimate and the other bids received, and included the abstract of bids as an attachment. Orbas was asked to confirm its bid by no later than 3 p.m. on September 17; to provide a detailed breakdown of the bid, by specification section, outlining the components of the lump-sum price; and to submit explanations as to why the bid was substantially lower than the other bids received.

On September 17, the contracting officer telephoned Orbas to inquire about the status of the bid review. He was told that, although the firm's numbers "looked good," it could not confirm the bid without coordinating with its bonding company. Orbas stated that the firm was attempting to arrange a meeting with its bonding company on Saturday, September 18, and that it would notify the agency of the results of that meeting by 9 a.m. on Monday, September 20. When the contracting officer had not heard from Orbas by that time, he telephoned the firm and was told that the meeting with the bonding company was then being conducted, and that no confirmation could be provided until its conclusion; an Orbas employee also stated that the bonding company had advised Orbas to withdraw its bid. Orbas agreed to call the contracting officer at 2 p.m. that afternoon to inform him of the status of the bid review. No such call was received.

By telefacsimile of September 23, Orbas informed the Navy that, while it did not appear that a mistake had been made, the firm's bonding company was still reviewing the bid and a response would be forthcoming on September 23 or 24. In a telefacsimile response sent that same day, the agency notified Orbas that the firm had failed to adequately

respond to the previous bid verification requests. The Navy set a new deadline of 12 p.m. on September 24 for a response; if Orbas confirmed its bid, it was requested to attend a bid verification meeting on September 27. By telefacsimile on September 24, Orbas confirmed its bid and provided a two-page, undated "summary worksheet," a contract history, and references. During a telephone discussion initiated by the agency on that same day, Orbas agreed to attend a bid verification meeting on September 28. The firm was told that the purpose of the meeting was to go over the bid, and was reminded to bring the originals of all worksheets and/or data used in the development of the bid.

At the September 28 bid verification meeting, in an attempt to identify the reasons for the substantial price differential, the agency asked Orbas's representative various questions it had prepared based upon specific sections of the solicitation where Orbas's worksheet costs were significantly lower than those in the government estimate. While Orbas's representative unequivocally confirmed the firm's bid, he was unable to answer these questions because, he stated, he had not personally participated in the development of the bid. He was given the opportunity to telephone knowledgeable persons at Orbas, but none was available. Orbas did not submit any additional documentation to explain its bid, and its only explanation for the overall price disparity was that the firm intended to perform the work with its own forces, rather than subcontracting. Orbas's representative was informed of seven specific solicitation sections for which Orbas's bid prices varied widely from the government estimate; these sections alone accounted for a \$520,215 price differential. Orbas's representative appeared to write down the major question asked about each section. Within 20 minutes of the meeting's conclusion, the agency received a telefacsimile from Orbas's president in which he again confirmed the bid, but did not attempt to substantiate the bid calculations.

Based on Orbas's failure to provide adequate documentation of the bid calculations to establish that its bid contained no errors, and the fact that Orbas's bid was grossly below the government estimate and the other bids, on September 29 the contracting officer rejected the bid pursuant to Federal Acquisition Regulation (FAR) § 14.406-3(g)(5). Award was made to Tomblison on September 30, and this protest was

---

<sup>1</sup>This is the term used by Orbas. In spite of the implication that this "summary worksheet" might summarize other data and/or worksheets, Orbas states that it is the only documentation that exists in support of the bid calculations.

subsequently filed. Performance of the contract has been suspended pending resolution of this protest.

Orbas asserts that its bid did not contain a mistake. Its position is that since it unequivocally confirmed the bid, and the agency has pointed to no specific mistake, the firm is entitled to award.

After the opening of bids, a contracting officer is to examine all bids for mistakes. Where he has reason to believe that a mistake may have been made, he is to ask the bidder to verify the bid, calling attention to the suspected mistake. FAR § 14.406-1. A significant disparity between the low bid and the other bids received or the government estimate is sufficient to place a contracting officer on notice of a mistake and to create a duty to request a bid verification. FAR § 14.406-3(g)(1); TLC Fin. Group, B-237384, Jan. 26, 1990, 90-1 CPD ¶ 116.

Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer is to consider the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. FAR § 14.406-3(g)(5).

A contracting officer's decision to reject an apparently mistaken bid under the authority of FAR § 14.406-3(g)(5) is subject to question only where it is shown to be unreasonable. See Pamfilis Painting, Inc., B-237968, Apr. 3, 1990, 90-1 CPD ¶ 355; TLC Fin. Group, supra. Where it is clear that a mistake has been made, the bid cannot be accepted, even if the bidder verifies the bid price, denies the existence of a mistake, or seeks to waive an admitted mistake, unless it is clear that the bid, both as submitted and intended, would remain low. Suffield Serv. Co., B-245579, Jan. 13, 1992, 92-1 CPD ¶ 54; Atlantic Serv., Inc., B-245763, Jan. 30, 1992, 92-1 CPD ¶ 125. Whether a bidder admits that it has made a mistake is not dispositive of whether a bid may be rejected as mistaken. TLC Fin. Group, supra.

The contracting officer's decision to reject Orbas's bid was reasonable. The record demonstrates that there are significant price disparities between Orbas's bid, based upon its summary worksheet, and the government estimate for

seven specific elements of work,<sup>2</sup> which create reasonable doubt that the bid price included all costs associated with the work required by the IFB. Further, neither Orbas's summary worksheet nor its representative at the bid verification meeting provided sufficient support for the bid calculations. We discuss three of the agency's major concerns in turn.<sup>3</sup>

The agency was concerned about the \$216,262 disparity between Orbas's worksheet cost of \$19,900 and the government estimate of \$236,162 for metal fabrications. The line on Orbas's summary worksheet dedicated to this section of the solicitation has four entries under the materials costs category:<sup>4</sup> number of units, type of units, unit cost, and total materials costs. The word "unit" was inserted in the type of unit column for metal fabrications. At the bid verification meeting, the Navy wanted to know both how the firm defined a "unit," and what was included in that "unit"; for example, were framing and foundation anchors, seismic holdowns, underflow air vents, and post caps and bases included. Orbas's only response to these questions was that the engineering estimate was as per the plans and specifications. The agency was unable to conclude from this answer that Orbas's bid for metal fabrications included all the required cost elements.

Likewise, the Navy was concerned about the \$106,285 disparity between Orbas's worksheet cost of \$14,175 and the government estimate of \$120,460 for the storm drain system. In the materials cost category for this item, unit was defined as a linear foot. At the bid verification meeting, the agency asked Orbas what was included in the materials cost of the linear foot price; the agency asked, for example, if bedding materials, rock for the perforated pipe, and pipe fittings were included. The Navy also asked how many linear feet per day could be installed, and with how many people on a crew. Orbas's representative stated that he had no specific knowledge to answer these questions.

---

<sup>2</sup>The summary worksheet raises other questions as well, including the fact that no materials costs are listed for demolition and removal. The worksheet also contains several unexplained mathematical errors.

<sup>3</sup>The other four areas of concern were removal and disposal of asbestos, removal and disposal of lead, concrete repair using epoxy resin, and gypsum board. The price differential between Orbas's bid prices and the government estimate for all seven of the sections of specific concern is \$647,278.

<sup>4</sup>The two categories on the worksheet are materials costs and labor costs.

Finally, the agency was concerned about the \$71,600 disparity between Orbas's worksheet cost of \$42,570 and the government estimate of \$114,170 for aluminum sliding doors. Orbas was asked, among other things, to identify the supplier of the doors and the quoted price for furnishing and delivering the doors to the site. Again, Orbas's representative could not answer these questions.

A bid may be rejected as mistaken where there is a price disparity between the bid and the other bids received and the government estimate, and where the bidder has failed to furnish sufficient documentation to substantiate its bid calculations when so requested. See Pamfilis Painting, Inc., supra; Veterans Administration-Advance Decision, B-225815.2, Oct. 15, 1987, 87-2 CPD ¶ 362. Despite several opportunities to explain this price disparity, Orbas elected to submit only an undated, two-page summary worksheet so bereft of detail that the agency could not determine why the significant price disparities existed, whether the bid included all the cost elements required under the solicitation, or even if the document was prepared prior to bid opening. Further, Orbas chose to send to the bid verification meeting an employee who could not answer the questions asked, and who, in fact, did not understand why the firm should have to answer any questions.<sup>5</sup> In the post-bid verification meeting telefacsimile to the agency from Orbas's president, sent apparently after he had been briefed by the firm's representative at that meeting, Orbas did not attempt to answer the agency's questions or in any way explain the price disparities, even though the president presumably was aware of the agency's specific concerns. Even now, in its submissions filed during the pendency of this protest, Orbas does not take the opportunity to substantiate its bid calculations. Under the circumstances, we think that Orbas has failed to produce sufficient documentation or explanation to substantiate its bid, and that the contracting officer's action in rejecting the bid as mistaken under FAR § 14.406-3(g)(5) was reasonable.

---

<sup>5</sup>The bid verification meeting memorandum indicates that the only explanation provided by Orbas for the significant disparities between the costs listed in its bid worksheet and the government estimate is that Orbas does not use very many subcontractors, thus implying that subcontractor overhead and profits are eliminated. We agree with the agency that this explanation alone does not sufficiently explain the discrepancies and ensure that the bidder understood and accounted for the requirements of the IFB, especially in light of the negligible detail found in the undated summary worksheet and the general lack of explanation provided by the protester.

Orbas complains that since the agency has cited no specific mistake in its bid, it is not clear that a mistake has been made. However, the facts of record, along with the scant information provided by the protester during both the bid verification process and the pendency of this protest, as well as the unanswered questions raised by the summary worksheet, present a sufficient indication of error as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders, as it is not clear that the bid, both as submitted and intended, would remain low. See FAR § 14.406-3(g)(5). Acceptance of the bid under these circumstances effectively would allow the bidder to decide, after bid opening, whether to stand by its bid, or to admit a mistake, as its own best interests dictate. Permitting such an election is not fair to other bidders whose prices have been disclosed at bid opening. Trataros Constr., Inc., B-254600, Jan. 4, 1994, 94-1 CPD ¶ \_\_\_\_.

In its comments on the agency report, Orbas argues for the first time that it was denied a reasonable opportunity to be heard with regard to the specific questions asked at the bid verification meeting. The protester contends that it should have been provided these questions in advance so that it could have prepared answers. Protests not based upon alleged improprieties in a solicitation must be filed within 10 days after the basis of protest is known or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1993). Orbas clearly was on notice that it was not provided the questions in advance on September 28, and also on notice that it would be given no further opportunity to answer these questions on October 1, when it received the notification of award to Tombleson. As it did not raise this issue until its comments were filed on December 2, 2 months later, it is untimely. In any event, the protester failed to take any of the multiple opportunities offered by the Navy, over a period of 16 days, to provide the information that these questions were designed to elicit. See PNM Constr., Inc., B-215973, Nov. 30, 1984, 84-2 CPD ¶ 590 (12 days was considered reasonable). Further, Orbas had not even attempted to answer these questions during the pendency of this protest. As a result, we think the protester has had more than a reasonable opportunity to be heard with regard to the questions surrounding its bid.

The protest is denied.

Robert P. Murphy  
Acting General Counsel